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UNCLAS SECTION 01 OF 13 PRETORIA 000171

SIPDIS

DEPT FOR AF/S, AF/EPS, EB/IFD/OIA/NHATCHER
USDOC FOR 4510/ITA/MAC/AME/OA/JDIEMOND, SMATHEWS
TREASURY FOR OAISA/BCUSHMAN, DBRESNICK
DEPT PASS USTR FOR EDUNLOP, PCOLEMAN, WJACKSON

SIPDIS

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TAGS: EINV EFIN ETRD ELAB OPIC USTR PGOV SF
SUBJECT: SOUTH AFRICA: 2006 INVESTMENT CLIMATE STATEMENT

REF: (A) 05 STATE 201904 (B) 05 PRETORIA 0226

¶1. (U) In response to Ref A, this cable presents post's 2006 Investment Climate Statement for South Africa. This is also Chapter 6 of the 2006 Country Commercial Guide for South Africa.

¶2. (U) BEGIN TEXT

Chapter 6 Investment Climate Statement FY 2006

6.1 Openness to Foreign Investment

The government of South Africa is open to foreign investment, which it views as a means to drive growth, improve international competitiveness, and provide access to foreign markets. Virtually all business sectors are open to foreign investors. No government approval is required, and there are almost no restrictions on the form or extent of foreign investment. Trade and Investment South Africa (TISA), a division of the Department of Trade and Industry (DTI), provides assistance. The agency concentrates on sectors which research has indicated that the country has a comparative advantage. TISA offers information on sectors and industries, consultation on the regulatory environment, facilitation for investment missions, links to joint venture partners, information on incentive packages, assistance with work permits, and logistical support for relocation. DTI publishes the "Investor's Handbook" on its website: www.dti.gov.za (see "publications").

Over the past decade, macroeconomic management has been strong, resulting in a strengthened rand and a consistently positive rate of economic growth. Since 1994, the government has sought to liberalize trade and enhance international competitiveness by lowering tariffs, abolishing most import controls, undertaking some privatization, and reforming the regulatory environment. The government would have liked to have experienced more foreign direct investment during this time, but it did not materialize. Several large acquisitions in the banking and telecommunications sectors promise to change this for 2006 and beyond, but are not likely to add much to the government's primary goal of increasing employment. In January 2005, Moody's assigned South Africa a sovereign debt rating

of Baa1, three steps into investment grade. Standard and Poor's and Fitch also rank South Africa at investment grade.

To alleviate very high unemployment (26.5%), the government has focused on quickening the pace of economic growth and job creation. Given steady domestic investment and the relative lack of foreign direct investment, the government has become convinced that the public sector must take the lead by investing in the nation's deteriorating infrastructure. State owned enterprises plan to invest more than $25 billion, mainly on transportation infrastructure and energy, over the next three years. Other key elements of the government's new Accelerated and Shared Growth Initiative (ASGI), to be unveiled in February 2006, include labor market reform, improved delivery of public services, skills development, a revamped industrial policy, and support to small business.

A 2005 survey of South African business sponsored by the World Bank and the Department of Trade and Industry queried domestic and foreign firms about South Africa's investment climate. Constraints most often mentioned were the lack of skilled labor, the strong rand limiting exports, labor relations, and crime. A 2005 survey conducted by the American Chamber of Commerce in South Africa re-enforced these views. While supporting the need for affirmative action, most foreign investors acknowledge that the lack of clarity surrounding the application of Black Economic Empowerment has had a dampening effect on their plans to further invest in South Africa.

Black Economic Empowerment has been at the center of business-government relations for the past several years. In January 2004, President Mbeki signed into law the Broad-Based Black Economic Empowerment Act of 2003, the legislation enacting the Black Economic Empowerment (BEE) strategy, a program to increase the participation in the economy of previously disadvantaged South Africans. The Act directed the Minister of Trade and Industry to develop a national strategy for BEE, issue implementing guidelines in the form of Codes of Good Practice, encourage the development of industry specific BEE charters, and to establish a National BEE Advisory Council to review progress on BEE. While firms are not legally required to meet BEE criteria, in practice they are less competitive if they do not.

On November 1, 2005, the Department of Trade and Industry released the final version of the "Framework for Measurement" and the first two "Codes of Good Practice." The first two Codes of Good Practice deal with how firms can comply with targets for BEE equity ownership and BEE management. The Framework identified seven criteria to be measured by means of a scorecard with specific targets and scoring rules. These included the percentage to which blacks own, manage, and work in an enterprise as well as targets for training black South Africans, purchasing supplies from BEE compliant firms, and assisting the development of black-owned business.

All firms must have their BEE compliance audited annually by an accredited verification agency, and be assigned a BEE compliance status based upon its BEE performance. A firm's BEE status will factor into the award of government contracts, and contributes to the BEE compliance status of a firm's customers.

On December 20 2005, DTI released drafts of the remaining codes for public comment. These codes deal

with employment equity, skills development, enterprise development, preferential procurement, small and medium sized enterprises, as well as guidelines on the transfer of equity to BEE firms/individuals for multinationals. Only after all the Codes of Good Practice are in final form will the Minister of Trade and Industry promulgate them together in the government Gazette according to Section 9(1) of the BEE Act 53 of ¶2003. BEE Codes of Good Practice and other pertinent BEE legislation may be found on DTI's website: www.dti.gov.za.

Poor or unclear regulations in key sectors, such as telecommunications, has sometimes acted as a disincentive to investment. In instances where the regulator is weak and unable to enforce its own regulations, foreign firms may find themselves at a disadvantage to domestic companies. Costs associated with pursuing legal action to resolve disputes can cut into the bottom line.

Following national elections in April 2004, the government unveiled plans to restructure most remaining state owned enterprises rather than proceed with plans for privatization. Nevertheless, in the short to medium-term, the government expects to sell a number of non-core businesses owned by Transnet (transportation), such as the Airports Company South Africa (ACSA), which manages South Africa's nine principal airports. Transnet also expects to enter into a concession for the operation of a container terminal at the Port of Durban. The planned privatization of smaller parastatals, such as Sentech (radio transmission), Safcol (forestry) and, in the case of Denel (Defense), a hoped-for partial buy-in by foreign suitors may also afford opportunities for foreign participation in the medium-term.

6.2 Conversion and Transfer Policies

The Exchange Control Department at the South African Reserve Bank (SARB) administers foreign exchange policy. Authorized foreign exchange dealers, normally one of the large commercial banks, must handle international commercial transactions and report every purchase of foreign exchange, irrespective of the amount, that is received by South African residents or companies. As a rule, there are only limited delays in the conversion and transfer of funds.

Foreign investors may purchase local securities without restriction. To facilitate repatriation of capital and profits, foreign investors should make sure that an authorized dealer endorses their share certificates as "non-resident." Foreign investors should also be sure to maintain an accurate record of investment.

For South African residents and companies, the government has made significant progress in liberalizing the foreign exchange regime. Since 2004, South African companies may invest in other countries without restriction (although SARB approval/notification is still required) and South African individuals may freely invest in foreign firms listed on South African stock exchanges. Individual South African taxpayers in good standing may invest up to R750,000 (app. $115,000) in other countries. In October 2005, the government announced that South African banks would be able to commit up to 40 percent of their domestic capital in other countries, but only 20 percent outside Africa. In addition, mutual and other investment funds may now invest up to 25 percent of their retail assets in other countries. Pension plans and insurance funds may invest 15 percent of

their retail assets in other countries.

Before accepting or repaying a foreign loan, South African residents must obtain SARB approval. The SARB must also approve the payment of royalties and license fees to non-residents when no local manufacturing is involved. When local manufacturing is involved, the DTI must approve the payment of royalties related to patents on manufacturing processes and products. Upon proof of invoice, South African companies may pay fees for foreign management and other services provided such fees are not calculated as a percentage of sales, profits, purchases, or income.

Further questions on exchange control may be addressed to:

South African Reserve Bank
Exchange Control Department
P.O. Box 427, Pretoria, 0001
Tel: +27 (0) 12 313-3911; Fax: +27 (0) 12 313-3197
Website: www.reservebank.co.za

6.3 Expropriation and Compensation

Under the Expropriation Act of 1975 and the Expropriation Act Amendment of 1992, the government is entitled to expropriate private property for reasons of public necessity or utility. The decision is an administrative one. Compensation should be the price that the property would have realized in an open market transaction. There is no record, dating back to 1924, of an expropriation or nationalization of an American investment in South Africa.

Racially discriminatory property laws during apartheid resulted in highly disproportionate patterns of land ownership in South Africa. As a result, the post apartheid government has committed to redistributing 30 percent of the country's farm land to black South Africans by 2014. Thus far, only 4 percent of total farm land has been redistributed under the government's land reform program. The government has embarked on market-based land reform, but wants to speed redistribution. In 2005, the government indicated that it was willing to use its power to expropriate land should farm owners refuse court approved purchase

prices. Shortly thereafter, the government initiated proceedings to expropriate a white owned farm after the owner refused the court approved purchase price. The owner has appealed to the courts.

6.4 Dispute Settlement

South Africa is a member of the New York Convention of 1958 on the recognition and enforcement of foreign arbitration awards, but is not a member of the International Center for the Settlement of Investment Disputes. South Africa recognizes the International Chamber of Commerce, which supervises the resolution of transnational disputes. South Africa applies its commercial and bankruptcy laws with consistency and has an independent, objective court system for enforcing property and contractual rights.

6.5 Performance Requirements and Incentives

DTI offers six investment incentives for manufacturing. Foreign Investment Grants may provide up to 15 percent of the value of new machinery and equipment to a maximum of R3 million (app. $500,000) per entity for relocation to South Africa. Industrial Development Zones provide duty-free import of production-related materials and zero VAT on materials sourced from South

Africa, along with the right to sell into South Africa upon payment of normal imported duties on finished goods. The Skills Support Program provides up to 50 percent of training costs and 30 percent of worker salaries for a maximum of three years to encourage the introduction of advanced skills. The Strategic Investment Project program offers a tax allowance of up to 100 percent (a maximum allowance of R600 million (app. $100 million) per project) on the cost of buildings, plant and machinery, for strategic investments of at least R50 million (app. $85 million). The Critical Infrastructure Facility supplements funds up to 30 percent of the development costs of qualifying infrastructure projects. The Small and Medium Enterprise Development Program offers a tax free grant of up to R3.05 million (app. $500,000) to manufacturers with assets less than R100 million (app. $15 million) for a maximum of three years. The first two years the grant is based on the investment in operating assets and the third year on the level of employment generated.

In July 2004, DTI announced an incentive to encourage investment, both foreign and domestic, in the local film industry. It established the Film and Television Production Rebate Scheme that allows eligible applicants to receive a rebate of 15 percent of the production expenditures for foreign productions and up to 25 percent for qualifying South African productions. Film projects must have begun after April 1, 2004 and must reach a threshold of R25 million (app. $4 million) to qualify for the rebate. Other requirements include 50 percent completion of the principal photography in South Africa and a minimum of four weeks photography time. Eligible productions include movies, tele-movies, television series, and documentaries. The maximum rebate for any project will be R10 million (app. $1.5 million). Details on the entire scheme are available at the DTI website at www.dti.gov.za.

To encourage investors to establish or relocate industry to areas throughout South Africa, the country's various provinces have development agencies that offer incentives. These vary from province to province and may include reduced interest rates, reduced rental cost for land and buildings, cash grants for the relocation of plant and employees, reduced rates for basic facilities, rail age and other transport rebates, and assistance in the provision of housing.

The Industrial Development Corporation, a self-financing, state-owned development finance institution that reports to DTI, provides equity and loan financing

to support investment in target sectors. It also provides credit facilities for South African exporters.

Several government-supported bodies provide technical assistance to industry. The Council for Scientific and Industrial Research provides multi-disciplinary research and development for industrial application. Technifin is a government-owned corporation which finances the commercialization of new technology and products. MINTEK develops mining and mineral processing technology for company application. The Council for Geoscience undertakes geological surveys and services related to minerals exploration.

Under the National Industrial Participation Program, foreign companies winning large tenders must invest at least 30 percent of the value of the imported content of the tender. The Department of Defense and the Armaments Corporation of South Africa impose an obligation of up to 50 percent on all defense purchases

exceeding US$2 million, and an obligation of at least 50 percent on purchases exceeding US$10 million.

The government initiated the Motor Industry Development Program (MIDP) in 1995 to restructure the South African automotive industry over a period of twelve years. The program was deigned to encourage local manufacturing by means of a duty rebate scheme on imported vehicles and component parts, to be phased out over the life of the program. In 2002, the Minister of Trade and Industry extended the program from 2007 to 2012. Import duties and duty rebates will continue to decline over this extended period. The import duty on built-up light vehicles will fall to 25 percent and the import duty on original equipment components will fall to 20 percent by ¶2012.

6.6 Right to Private Ownership and Establishment

The right to private property is protected under South African law. All foreign and domestic private entities may freely establish, acquire, and dispose of commercial interests. The securities regulation code requires that an offer to minority shareholders be made when 30 percent shareholding has been acquired in a public company that has at least 10 shareholders and net equity in excess of R5 million.

State owned enterprises dominate a number of key sectors in South Africa. Eskom supplies 94 percent of South Africa's electricity. Transnet operates the bulk of the nation's rail, port, and air transportation. The South African Post Office is a legislated monopoly. Telkom, still 37 percent owned by government, is the sole fixed-line telephone operator (a second operator was licensed in December 2005).

The Competition Act of 1998 and subsequent amendments address anticompetitive practices in both the private and public sectors. The Competition Commission has demonstrated increasing capacity to implement competition policy effectively. There have been more frequent challenges against state owned enterprises that compete unfairly in recent years.

6.7 Protection of Property Rights

The South African legal system protects and facilitates the acquisition and disposition of all property rights, e.g., land, buildings, and mortgages. Deeds must be registered at the Deeds Office. Banks usually provide finance for the purchase of property by registering the mortgage as security.

Owners of patents and trademarks may license them locally, but when a patent license entails the payment of royalties to a non-resident licensor, DTI must approve the royalty agreement. Patents are granted for twenty years - usually with no option to renew. Trademarks are valid for an initial period of ten years and thereafter renewable for ten-year periods. The

holder of a patent or trademark must pay an annual fee to preserve ownership rights. All agreements relating to payment for the right to use know-how, patents, trademarks, copyrights, or other similar property are subject to approval by exchange control authorities. For consumer goods, a royalty of up to four percent of factory selling price is standard. For intermediate and finished capital goods, generally a royalty of up to six percent will be approved.

Literary, musical, and artistic works, as well as cinematographic films and sound recordings are eligible for copyright under the Copyright Act of 1978. New

designs may be registered under the Designs Act of 1967, which grants copyrights for five years.

The Counterfeit Goods Act of 1997 provides additional protection to owners of trademarks, copyrights, and certain marks under the Merchandise Marks Act of 1941. The Intellectual Property Laws Amendment Act amended the Merchandise Marks Act of 1941, the Performers' Protection Act of 1967, the Patents Act of 1978, the Copyright Act of 1978, the Trademarks Act of 1993, and the Designs Act of 1993 to bring South African intellectual property legislation fully into line with the WTO's Trade-Related Aspects of Intellectual Property Rights Agreement. Amendments to the Patents Act of 1978 were also intended to bring South Africa into line with TRIPS, to which South Africa became a party in 1999, and provides for the implementation of the Patent Cooperation Treaty.

The International Intellectual Property Alliance reported an increase in border seizures of pirated goods, as well as increased police raids in the optical disc market during 2005. A local watchdog, the South African Federation Against Copyright Theft reported on its website (www.safact.co.za) statistics on seizures of counterfeit DVDs as well as a number of successful criminal court cases against pirates in 2005, demonstrating the government's commitment to IPR enforcement.

6.8 Transparency of the Regulatory System

In general, the Companies Act of 1973 provides for transparent regulations concerning the establishment and operation of businesses. Under the Act, for-profit businesses employing more than 20 persons must register as a company within 21 days. The same rules apply to foreign companies, with the exception that foreign companies may elect to operate as an "external company" (with no limit on legal liabilities). In general, businesses must also register with the local Regional Services Council, Department of Labor, Workman's Compensation Commissioner, the appropriate industry council, and the South African Revenue Service. In addition, all businesses must obtain an operating license from local authorities. The validity of an operating license is indefinite unless a business is sold or relocated. Forms to be filled out by investors are straightforward. The process takes six months on average, but can be done in one month through Trade and Investment South Africa, a division of DTI.

Virtually all business activities are open to foreign investors. The government does not prohibit or officially discourage a foreign-owned business from locating in a particular region of the country. Restrictions that apply to a particular industry apply to both domestic and international investors. Exceptions exist in the areas of banking and defense. For example, a branch of a foreign bank may be required to employ a certain number of South Africans and locally maintain a minimum capital base to obtain a banking license. In addition, a foreign company must register as an external company before immovable property can be registered in their names.

6.9 Efficient Capital Markets and Portfolio Investment

South Africa's banks are well-capitalized and comply with international banking standards. Non-performing loans as a percentage of total loans and advances was 1.6 percent as of June 2005. Six of the thirty-five banks in South Africa are foreign owned and fifteen are

branches of foreign banks. The "Big Four" (Standard, ABSA, First Rand, and Nedcor) dominate the sector, accounting for almost 85 percent of the country's banking assets, which total over $240 billion. In 2005, the government approved Barclays' acquisition of ABSA, the first of the Big Four to become foreign owned. (Technically it is the second. Old Mutual, which moved its primary listing from the Johannesburg to the London Stock Exchange in 1999, owns Nedcor.)

The SARB regulates the sector according to the Bank Act of 1990. There are three alternatives for foreign banks to establish local operations, all of which require SARB approval: 1) a separate company, 2) a branch, or 3) a representative office. The criteria for the registration of a bank are the same as for domestic banks. Foreign banks, however, must include additional information, such as holding company approval, a letter of "comfort and understanding" from the holding company, and a letter of no objection from the foreign bank's home regulatory authority. More information on the banking industry may be obtained from the Banking Association at the following website: www.banking.org.za.

The Financial Services Board (FSB) governs South Africa's non-bank financial services industry (see website: www.fsb.co.za). The FSB regulates insurance, pension funds, unit trusts (i.e., mutual funds), participation bond schemes, portfolio management, and the financial markets. The JSE Securities Exchange is the sixteenth largest exchange measured by market capitalization in the world. As of November 2005, market capitalization stood at $514 billion with a total of 364 firms listed. The Bond Exchange of South Africa (BESA) is licensed under the Financial Markets Control Act. Membership includes banks, insurers, investors, stockbrokers, and independent intermediaries. The exchange consists principally of bonds issued by government, state owned enterprises, and increasingly private corporations. More information on financial markets may be obtained from the JSE Securities Exchange SA (website: www.jse.co.za) and the Bond Exchange (website: www.bondexchange.co.za).

Foreign investors deemed "affected persons" must obtain SARB approval to borrow amounts greater than R20,000 (app. $3,100). "Affected persons" are defined as companies or other bodies in which (1) 75 percent or more of the capital assets or earnings may be used for payment to, or for the benefit of, a non-resident, or (2) 75 percent or more of the voting securities, voting power, power of control, capital, assets or earnings are vested in, or controlled by, any non-resident. No person in South Africa may provide credit to a non-resident or "affected person" without an exchange control exemption. Non-residents and "affected persons," however, may borrow up to 100 percent of the South African Rand value of funds introduced from abroad and invested locally. Additionally, the ability to borrow locally increases if both residents and non-residents own the local enterprise.

6.10 Political Violence

Political violence is no longer a serious issue in South Africa, but criminal violence remains high. National and provincial governments have pursued a number of programs to control criminal violence and levels of most violent crimes have stabilized or fallen in recent years.

6.11 Corruption

South African law provides for prosecution of government officials who solicit or accept bribes. Penalties for offering or accepting bribes include criminal prosecution, fines, dismissal (for government employees), and deportation (for foreign citizens). The South African Prevention and Combating of Corrupt Activities Act of 2004 clarified what should be considered as corruption and allows for the investigation and seizure of "unexplained wealth." The act also obliges public officials to report corrupt activities, prescribes strict penalties, including the possibility of life imprisonment, and tasks the National Treasury to create a register of corrupt individuals and firms that will not be allowed to submit bids on government tenders. One shortcoming of the Act is the provision of protection for whistleblowers.

New laws, such as the Promotion of Access to Information Act signed into law in February 2000, have helped to increase transparency in government in the last few years. The Public Finance Management Act, which became effective on April 1, 2000, has helped to raise the level of oversight and control over public funds and improved the transparency of government spending, especially with regard to off-budget agencies and parastatals.

At least ten agencies are engaged in fighting corruption. Some, like the Public Service Commission (PSC), Office of the Public Protector and Office of the Auditor-General are constitutionally mandated. The South African Police Anti-Corruption Unit and the Directorate for Special Operations (popularly known as the Scorpions) have dedicated units to combat corruption. In a much celebrated case, the National Prosecuting Authority indicted former Deputy President Jacob Zuma on charges of corruption in 2005. The trial is set to take place in 2006.

According to the 2004 Institute for Security Studies' "National Victims of Crime Survey," which drew from a nationally representative sampling of South African households, petty corruption - mainly bribery - was the second-most experienced crime in South Africa after burglary. According to Transparency International's 2005 Corruption Perceptions Index, South Africa ranked 46 out of 158 and was third least corrupt in Africa.

South Africa is not a signatory of the OECD Convention on Combating Bribery, but is a signatory of the UN Convention against Corruption. Transparency International maintains an office in South Africa.

6.12 Bilateral Investment Agreements

South Africa has bilateral investment agreements with Argentina, Austria, Belgium, Canada, Chile, the Czech Republic, Finland, France, Germany, Greece, Mauritius, the Netherlands, the Republic of Korea, Spain, Sweden, Switzerland, Turkey, and the United Kingdom. A Trade, Development, and Cooperation Agreement went into force between South Africa and the European Union on January 1, 2000, but it does not contain an investment chapter.

In 2003, the United States initiated free trade negotiations with the Southern African Customs Union (including South Africa, Botswana, Lesotho, Namibia, and Swaziland) with the goal of concluding an agreement that would include a chapter on investment. Seven negotiating rounds have been held, but much work remains.

Agreements regarding mutual assistance between the customs administrations of the United States and South Africa became effective on August 1, 2001. The U.S.-South Africa bilateral tax treaty eliminating double-

taxation became effective on January 1, 1998.

6.13 OPIC and Other Investment Insurance Programs

In 1993, South Africa signed an investment incentive agreement with the United States to facilitate Overseas Private Investment Corporation (OPIC) programs. To date, OPIC has invested in a number of investment funds supporting sub-Saharan Africa development, including the Africa Growth Fund ($25 million), the Modern Africa Growth and Investment Fund ($105 million), and the ZM Investment Fund ($120 million). OPIC also established the $350 million Sub-Saharan Africa Infrastructure Fund (SAIF) to fund infrastructure projects in sub-Saharan Africa. OPIC helped the National Urban Reconstruction and Housing Agency (NURCHA) to establish a $31 million scheme to lend to small contractors for the construction of affordable houses. In 2004, OPIC entered into an agreement with the Homeloan Guarantee Company (HLGC) to fund low-income home loans for HIV-positive South Africans. The pilot program for this project was initiated in 2005. Additional information on OPIC programs that involve South Africa may be found on OPIC's website: www.opic.gov.

South Africa is also a member of the World Bank's Multilateral Investment Guarantee Agency.

6.14 Labor

The right to strike is protected under South African labor law. Although labor militancy has declined since 1994, the number of work days lost to strikes has risen to 2.2 million as of September 2005. As of 2003, total trade union membership was approximately 3.3 million persons, or roughly 42 percent of the economically active population employed in the formal sector. Most union members belong to affiliates of the three major union federations: the Congress of South African Trade Unions (COSATU), the Federation of Unions of South Africa (FEDUSA) or the National Council of Trade Unions (NACTU). Although COSATU, the largest of the federations, is allied with the African National Congress (ANC) and the South African Communist Party (SACP), it often opposes the government on issues of economic and health policy. COSATU is opposed to efforts to privatize government services and state-owned corporations.

According the March 2005 Labor Force Survey (LFS), the official unemployment rate is 26.5 percent. This rate uses the International Labor Organization (ILO) definition of unemployment, which excludes persons who have not actively sought employment during the previous four weeks. To help counter unemployment and contribute to economic growth, the government has shifted substantial resources to skills development, and undertaken a growth and employment policy.

South Africa has no country-wide minimum wage, but the Minister of Labor has issued determinations that set a minimum wage for certain occupations where collective bargaining is not common. These include domestic workers, farm workers, taxi-drivers, and retail employees. In addition, the Minister can apply collective bargaining agreements to firms that did not participate in negotiations.

Since 1994, the South African Government has systemically sought to remove all vestiges of apartheid labor legislation. In its place, the government has sought to install a labor market characterized by employment security, reasonable wages, and decent working conditions. Under the aegis of the National Economic Development and Labor Council (NEDLAC), government,

business, and organized labor negotiated all labor laws, with the exception of laws pertaining to occupational health and safety. NEDLAC negotiations placed a high value on worker rights and collective bargaining.

Major labor legislation includes the following:

-- The Labor Relations Act, in effect since November 1996, enshrines the right of workers to strike and of management to lock out workers. The Act created the Commission on Conciliation, Mediation, and Arbitration

(CCMA) which can conciliate, mediate, and arbitrate in cases of labor dispute, required to certify an impasse in bargaining council negotiation before a strike can be legally called. The CCMA currently has a caseload in excess of what was anticipated.

-- The Basic Conditions of Employment Act, implemented in December 1998, establishes a 45-hour workweek as well as minimum standards for overtime pay, annual leave, and notice of termination.

-- The Employment Equity Act prohibits unfair employment discrimination and requires large and medium-sized employers to prepare affirmative action plans to ensure that black African, women, and disabled persons are adequately represented on the workforce.

-- Occupational Health and Safety Act, last amended in 1993, provides for occupational health and safety standards and gives the Department of Labor the right to inspect the workplace. For the mining industry, the Inspector of Mines provides regulatory oversight under the Mine Health and Safety Act.

-- The Skills Development Act imposes a levy on employers equal to one percent of the payroll that is to be used for training programs devised by industry-specific training authorities. Employers who provide job skills training can claim back much of their contribution from government.

Companies have complained about the introduction, through a regulation in early 2003, of a two percent training levy on the salaries of expatriates in order to enter the country under an expedited visa procedure. The levy does not apply to expatriates already resident in the country or to inter-company transfers. Expatriates who enter the country under the normal visa procedure are exempt from the levy, but the normal process is complex and time consuming. The government's decision to implement the levy-based system through regulation rather than legislation has also been controversial. A legal challenge to the regulations further delayed the implementation of the new immigration legislation and this created more uncertainty about the effective handling of applications for visas.

Despite amendments to some of the above labor laws passed in 2002, business argues that over regulation of the labor market has constrained employment and contributed to the rise in unemployment. On the other side, trade unions argue that employers evade labor legislation through the use of labor brokers who supply casual workers. Other areas of contention revolve around the application of wage structures to all firms in an industry, whether or not firms participated in wage negotiations, and complex requirements and appeal procedures for the dismissal of workers.

6.15 Foreign Trade Zones/Free Ports

South Africa designated its first Industrial

Development Zone (IDZ) in 2001. IDZs offer duty-free import of production-related materials and zero VAT on materials sourced from South Africa, along with the right to sell into South Africa upon payment of normal imported duties on finished goods. Expedited services and other logistical arrangements may be provided for small to medium-sized enterprises, or for new foreign direct investment. Co-funding for infrastructure development is available. There are no exemptions from other laws or regulations, such as environmental and labor laws. The Manufacturing Development Board licenses IDZ enterprises in collaboration with the South African Revenue Service (SARS), which handles IDZ customs matters. IDZ's operators may be public, private, or a combination of both. IDZs are currently located near Port Elizabeth at Coega, in East London, Richards Bay, and at Johannesburg International Airport.

6.16 Foreign Direct Investment Statistics

Foreign direct investment (FDI) data is readily available in South Africa, but published statistics vary depending on their source and definition. Among the numerous institutions that provide foreign investment data, the U.S. Embassy in South Africa relies mostly on the SARB. SARB statistics conform to the IMF definition of FDI (i.e., FDI is generally defined as ownership of at least 10 percent of the voting rights in an organization by a foreign resident or several affiliated foreign residents, including equity capital, reinvested earnings, and long-term loan capital.) and represent actual investment, excluding announced but not completed "intended" investment. However, the SARB does not provide country-specific figures that distinguish between actual investment flows and changes in investment stocks caused by asset swaps, exchange rate adjustments, and mergers and acquisitions. This makes it difficult to track the United States' and other countries' FDI position in South Africa on an annual basis.

Because SARB statistics only provide an annual total for all the countries' flows combined, observers also often consult more updated information obtained from the South Africa-based firm "Business Map" (BM). The latter offers fee-based services for a wide range of investor-related data and analysis (website: www.businessmap.co.za).

The following FDI statistics were drawn from the SARB's December 2005 Quarterly Bulletin. The conversion exchange rate used was that of the average for each year cited.

Table A: Average Exchange Rates

	2000	2001	2002	2003	2004
Rand/US$	6.94	8.83	10.52	7.56	6.45

Table B: Year-end Stock of Foreign Direct Investment in South Africa

	2000	2001	2002	2003	2004
Rand (billion)	328.86	370.70	255.84	303.55	355.09
US$ (billion)	47.42	41.96	24.33	40.14	55.05

Table C: Year-end Stock of South African Direct Investment Abroad

	2000	2001	2002	2003	2004
Rand (billion)	244.65	213.18	189.91	180.51	216.66
US$ (billion)	35.28	24.13	18.06	23.87	33.59

Table D: GDP (in billion rands at current prices) and Year-end FDI Stock as a percentage of GDP

	2000	2001	2002	2003	2004
GDP	922.1	1,020.0	1,168.8	1,257.0	1,386.7
FDI (%)	35.7	36.3	21.9	24.1	25.6

Table E: Year-end stock of FDI in South Africa by region/country (billions)

REGION/COUNTRY	RAND 2003	RAND 2004	US$ 2003	US$ 2004
EUROPE - Total	245.8	301.0	32.5	46.7
UNITED KINGDOM	188.4	228.0	24.9	35.3
GERMANY	22.9	25.8	3.0	4.0
SWITZERLAND	6.1	6.4	0.8	1.0
NETHERLANDS	16.1	16.2	2.1	2.5
FRANCE	4.1	6.5	0.5	1.0
ITALY	2.0	2.1	0.3	0.3
N&S AMERICA (total)	32.1	34.1	4.2	5.3
USA	29.5	31.2	3.9	4.8
AFRICA (total)	4.7	4.2	0.6	0.7
ASIA (total)	20.5	15.2	2.7	2.4
MALAYSIA	10.0	2.4	1.3	0.4
JAPAN	7.1	7.4	0.9	1.1

OCEANIA (total)	0.4	0.5	0.1	0.1
TOTAL	303.4	355.1	40.1	55.1

Table F: Year-end Stock of South African Direct Investment Abroad by Region/Country (billions)

REGION/COUNTRY	RAND 2003	RAND 2004	US$ 2003	US$ 2004
EUROPE - Total	137.4	165.5	18.2	25.7
UNITED KINGDOM	44.1	65.0	5.8	10.1
LUXEMBURG	43.7	51.1	5.8	7.9
AUSTRIA	11.2	16.7	1.5	2.6
OTHER	38.4	2.2	5.1	0.4
N&S AMERICA (total)	17.0	17.5	2.3	2.7
USA	14.9	15.3	2.0	2.4
AFRICA (total)	15.8	23.6	2.1	3.7
ASIA (total)	3.5	3.2	0.5	0.5
OCEANIA (total)	6.8	6.8	0.9	1.1
TOTAL	180.5	216.7	23.9	33.6

Table G: Year-end Stock of FDI in South Africa by Industry Sector (billions)

INDUSTRY	RAND 2003	RAND 2004	US$ 2003	US$ 2004
Agriculture, Forestry & Fishing	0.5	0.7	0.1	0.1
Mining	103.1	111.6	13.6	17.3
Manufacturing	75.4	111.4	10.0	17.3
Construction	1.9	2.0	0.3	0.3
Trade, Catering, & Accommodation	13.4	14.5	1.8	2.3
Transport, Storage, & Communication	22.0	14.1	2.9	2.2
Finance, Insurance, Real Estate & Business Services	86.6	100.2	11.5	15.5
Social services	0.4	0.5	0.1	0.1
TOTAL	303.4	355.1	40.1	55.1

Table H: FDI Flows into South Africa:

Investment by foreigners in undertakings in South Africa in which they have at least 10% of the voting rights:

2000	6.2
2001*	58.4
2002	8.0
2003	5.6
2004	5.2

*The high inflow in 2001 was due to the Anglo American/DeBeers transaction.

Table I: FDI Flows out of South Africa:

Investment by South Africans in undertakings abroad in which they have at least 10% of the voting rights:

2000	1.9
2001	-27.4 (inflow - decrease in investment abroad)
2002	-4.2 (inflow - decrease of investment abroad)
2003	4.3
2004	8.7

*2001 De Beers/ Anglo American transaction resulted in the return of capital, previously invested abroad, to South Africa.

Since 1994 many foreign firms have opened or re-opened offices in South Africa. There are an estimated 700 American companies (including subsidiaries, joint ventures, local partners, agents, franchises, and

representative offices) doing business in South Africa. The second and third highest numbers of companies per country are from Germany and the U.K., respectively.

Key Investment Industries in South Africa:

South Africa is a food self-sufficient country. The bulk of the population's food needs are supplied locally. In certain instances, South African food and beverage companies have become global players. Major international agro-processing companies with a presence in South Africa include Unilever, Nestle, Coca-Cola, Danone, Parmalat, Kellogg, HJ Heinz, Cadbury-Schweppes, Virgin Cola, McCain Foods of Canada, Pillsbury.

The chemical industry is the largest manufacturing sector in the South African economy, accounting for 5 percent of GDP. The country is a world leader in the manufacture of synthetic fuel from coal. In addition to Sasol and PetroSA Fischer-Tropsch based synthetic fuel operations, four oil refineries dominate the petroleum and petrochemical industry. The rest of the chemical manufacturing sector consists mainly of AECI, Sentrachem, and fertilizer plants.

Four major commercial banking groups that provide retail and investment banking services dominate the South African banking industry. The European, Malaysian, and U.S. banks with banking licenses have so far concentrated on corporate rather than retail banking. Foreign banks have gained market share by offering competitive lending rates.

The South African automotive and components industry includes Ford, General Motors, Volkswagen, Bavarian Motor Works, Daimler-Chrysler, Nissan, and Toyota, all of which benefit from the Motor Vehicle Development Program and have production plants in South Africa.

Table F: Top Foreign Companies Invested In South Africa

Canada - Placer Dome

Denmark - AP Moller
France - Lafarge
Germany - BMW
Italy - Cirio (Del Monte)
Switzerland - Movenpick Hotels
U.K. - Billiton; Lonrho Plc, SA Breweries, Anglo American, Barclays, Vodafone, British Petroleum, Old Mutual
U.S. - Caltex; Coca Cola; Dow Chemicals; General Motors, Ford
Saudi Arabia - Oger

These companies have invested in excess of R1 billion in South Africa since 1994.

Other significant U.S. investors include: McDonalds, Levi Strauss, Nike, Silicon Graphics, Microsoft, HP, Dell, Sara Lee, Caterpillar, Goodyear, Eli Lilly, Johnson and Johnson, Proctor & Gamble, Fluor, CitiGroup, IBM, and General Electric.

END TEXT

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